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EXAMINER				
PRICE, CARL D				
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/603,947
Filing Date: June 25, 2003
Appellant(s): DOWST ET AL.

Dana F. Bigelow
(Reg. No. 26,441)

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed **03/06/2009** appealing from the Office action mailed **12/10/2008**.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2,154,305	GOERL	4-1939
GB 882,881	HORNER	11-1961
DE 33 39 848	NUSSER	5-1985
FR 2 446 097	BARRARD	8-1980
US 4,374,489	ROBBINS	2-1983
FR 2,816,395	CHEN	5-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 151-160 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 151 recites the limitation "the external bottom end" in lines 6-7. There is insufficient antecedent basis for this limitation in the claim.

Claim 152 recites the limitation "its top rim" in lines 3. There is insufficient antecedent basis for this limitation in the claim, since the claim includes two previous recitations of "top rim".

Claim 152 is vague and indefinite. Since the claim lacks any shape or form associated with the bottom housing “top rim” which would necessarily provide a standard for ascertaining the meaning of the bottom housing “top rim” being oriented such that it is “facing” said vessel top end. Therefore, one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 153 recites the limitation “said burner fuel tank port” in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims Rejected under 35 U.S.C. 102(b)

Claims **151** and **152** are rejected under 35 U.S.C. 102(b) as being anticipated by US **2154305 (Goerl)**.

US **2154305 (Goerl)** shows a portable heating system comprising:

- a vessel (13) having a thermally conductive bottom end defining an external bottom side (31, 32, 33) of the vessel;
- a top housing (16) having a top rim (53) coupled circumferentially to the external bottom end of the vessel (at 32, 53), a side structure (54) extending downwardly from the top rim (53) and having a plurality of exhaust vents (82) formed therein, and a bottom rim (48, 51);
- a bottom housing (17) having a top rim (49, 52) configured to be selectively coupled to the top housing bottom rim (48) and containing a burner (15) having a heat outlet head disposed below the external bottom side of the vessel when the bottom housing is coupled to the top housing (see figure 8), the bottom housing further having a plurality of air inlet vents (81) formed therein;
- wherein the bottom housing is so configured and sized as to be removable from said top housing and temporarily placed for storage in the vessel cavity (see figure 4).

- In regard to claim 152, since the diameter of the lower end rim (55) of the bottom housing (17) is less than the diameter of vessel outlet port (35) it is capable of being place in the vessel in the manner set forth in the claim.
- In regard to claims 153 and 154, the fuel source and burner are formed as a single unit and supported by and at a lower bottom housing location (i.e. –below the top rim (49)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims Rejected under 35 U.S.C. 103(a)

Claims **106-116** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002154305** (of record) in view of **GB000882881** (of record).

US002154305 shows a portable heating system comprising:

- a vessel (13) having a thermally conductive bottom end defining an external bottom side (31, 32, 33) of the vessel;
- a top housing (16) having a top rim (53) coupled circumferentially to the external bottom side of the vessel (at 32, 53), a side structure (54) extending downwardly from the top rim (53) and having a plurality of exhaust vents (82) formed therein, and a bottom rim (48, 51);

Art Unit: 3749

- a bottom housing (17) having a top rim (49, 52) configured to be selectively coupled to the top housing bottom rim (48) and containing a burner (15) having a heat outlet head disposed below the external bottom side of the vessel when the bottom housing is coupled to the top housing (see figure 8), the bottom housing further having a plurality of air inlet vents (81) formed therein

US002154305 shows and discloses the invention substantially as set forth in the claims with possible exception to:

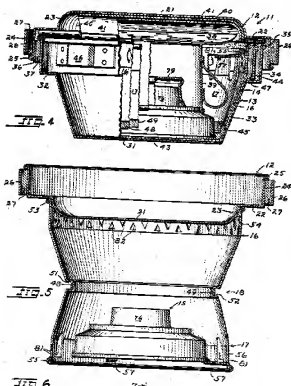
- a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

April 11, 1938.

C. P. GOERL
COOKING KIT
Filed March 9, 1938

2,154,305

3 Sheets-Sheet 2

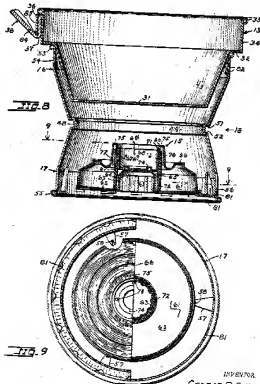


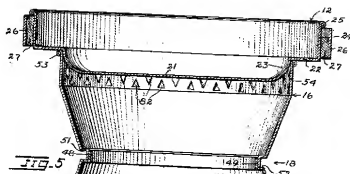
April 11, 1938.

C. P. GOERL
COOKING KIT
Filed March 9, 1938

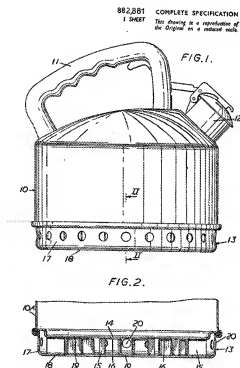
2,154,305

3 Sheets-Sheet 3

INVENTOR
C. P. GOERL
By _____



GB000882881 teaches, from applicant's same vessel heating field of endeavor, placing a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).



In regard to claims 106 -116, for the purpose of making the base readily separable from the base and the base is storable within the vessel and to increase the thermal heat efficiency by confining the flow to heat about the vessel bottom, it would have been obvious to a person

having ordinary skill in the art to modify **US002154305** to include a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side in the manner set forth in applicant's claims, in view of the teaching of **GB000882881**.

In regard to claims **111-116**, since shape of the protrusions the manner of coupling (e.g. – soldering, brazing, gluing, etc.), the height of the vessel, length of the protrusions, aspect ratio of the protrusions, etc. would depend on numerous design concerns such as the overall size and shape of both the burner and vessel, the type of substance being heat, the amount of heat intended to be transferred to the substance through the vessel wall, etc., to configure the protrusions to have dimensions and to be attached in the manner set forth in the claims, can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced there from over the prior art of record. Further in this regard it is noted that **GB000882881** itself teaches that elements, such as apertures 20, are of such a size “that the maximum amount of heat is absorbed by the strip 15 which is secured in intimate heat-conducting relationship with the base of the kettle” (beginning page 2, line15).

Claims Rejected under 35 U.S.C. 103(a)

Claims **117-149** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002154305** (of record) in view of **GB000882881** (newly cited) and **DE 33 39 848** (of record).

US002154305 shows a portable heating system comprising:

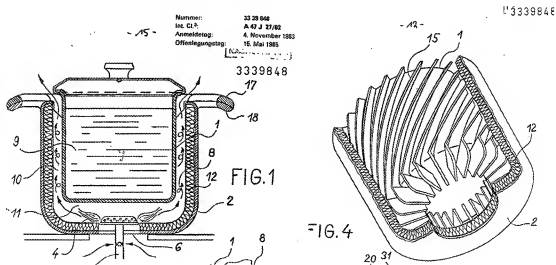
- a vessel (13) having a thermally conductive bottom end defining an external bottom side (31, 32, 33) of the vessel;
- a top housing (16) having a top rim (53) coupled circumferentially to the external bottom side of the vessel (at 32, 53), a side structure (54) extending downwardly from the top rim (53) and having a plurality of exhaust vents (82) formed therein, and a bottom rim (48, 51);
- a bottom housing (17) having a top rim (49, 52) configured to be selectively coupled to the top housing bottom rim (48) and containing a burner (15) having a heat outlet head disposed below the external bottom side of the vessel when the bottom housing is coupled to the top housing (see figure 8), the bottom housing further having a plurality of air inlet vents (81) formed therein.

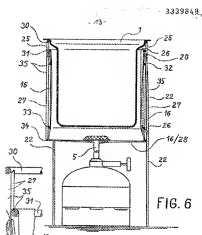
US002154305 shows and discloses the invention substantially as set forth in the claims with possible exception to:

- a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

GB000882881 teaches, from applicant's same portable heater field of endeavor, placing a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

DE 33 39 848 teaches (figures 1 and 2), from applicant's same portable heater field of endeavor dimension the outer burner diameter to be less than the diameter of the inner central cavity formed by the thermally conductive members, for the purpose of effectively directing heat from the burner flames into and along the heat transfer passages.





In regard to claims **117-149**, for the purpose of making the base readily separable from the base and the base is storable within the vessel and to increase the thermal heat efficiency by confining the flow to heat about the vessel bottom, it would have been obvious to a person having ordinary skill in the art to modify **US002154305** to include a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side in the manner set forth in applicant's claims, in view of the teaching of **GB000882881**. Furthermore, in regard to claims **117-149**, for the purpose of effectively directing heat from the burner flames into and along the heat transfer passages, it would have been obvious to a person having ordinary skill in the art to dimension the outer burner diameter to be less than the diameter of the inner central cavity formed by the thermally conductive members, in view of the teaching of **DE 33 39 848**.

In regard to claims **122-128**, **134-139** and **145-149**, since shape of the protrusions the manner of coupling (e.g. – soldering, brazing, gluing, etc.), the height of the vessel, length of the protrusions, aspect ratio of the protrusions, etc. would depend on numerous design concerns such as the overall size and shape of both the burner and vessel, the type of substance being heat, the amount of heat intended to be transferred to the substance through the vessel wall, etc., to configure the protrusions to have dimensions and to be attached in the manner set forth in the claims, can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced there from over the prior art of record. Further in this regard it is noted that **GB000882881** teaches that elements, such as apertures 20,

are of such a size "that the maximum amount of heat is absorbed by the strip 15 which is secured in intimate heat-conducting relationship with the base of the kettle" (beginning page 2, line15).

Claims Rejected under 35 U.S.C. 103

Claims 153-160 are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002154305** (of record) in view of **FR 2 446 097** (of record).

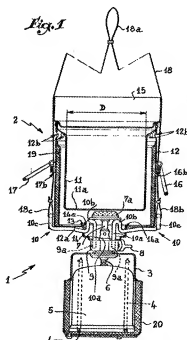
US002154305 shows and discloses the invention substantially as set forth in the claims with possible exception to:

- an igniter portion disposed above the burner and a recess or indentation in the cover (15) for receiving or accommodate the extending igniter portion; and
- friction or slot and dimple attachment means for the upper and lower housings.

FR 2 446 097 teaches, from applicant's same portable heater field of endeavor, providing portable collapsible heaters with burners of the type having a threaded fuel source connection located in the lower portion thereof for connection to a fuel source there below.

Pl. I. - 4

2446097



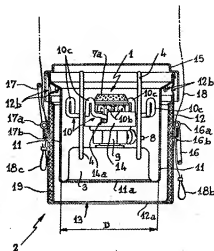


Fig. 5

In regard to claim **153-160**, for the purpose of providing a suitable alternative burner and fuel source, it would have been obvious to a person having ordinary skill in the art to modify **US 2154305 (Goerl)** to include a burners of the type having a threaded fuel source connection located in the lower portion, in view of the teaching of **FR 2 446 097**. That is, for the purpose of providing a suitable alternative burner and fuel source, it would have been obvious to a person having ordinary skill in the art to substitute for the burner of **US 2154305 (Goerl)** a burner arrangement such as that taught by **FR 2 446 097** which includes a burner fuel source and threaded burner fuel port extending from below and into the bottom housing.

Also, Official Notice is taken that it is well known to place igniters above, that is, downstream of fuel exiting burner heads as a recognized optimal location to effect ignition of the fuel (see **FR 2 816 395** (of record)). Thus, in view of that which is well known, it would have been obvious to a person having ordinary skill in the art to provide **US 2154305 (Goerl)** with such an igniter arrangement. Regarding any necessary recess or indentation in the cover for receiving or accommodate the extending igniter portion it is noted that the covers (23, 39, 40, and 41) of **US 2154305 (Goerl)** is formed with such a recess capable of performing this function. In regard to claims **159** and **160**, Official Notice is taken that burner components are known to be

secured by slot and dimple attachment means for (see for example **US004374489**). Thus, it would have been obvious to a person having ordinary skill in the art to modify attachment of the upper and lower housings in **US 2154305 (Goertl)** to include such well known securing and fastening arrangement.

(10) Response to Argument

Ground 1 - Rejection of claims 151-160 under 35 U.S.C. 112 as being indefinite.

Regarding the insufficient antecedent basis for the limitation "the external bottom end" in claim 151, lines 6-7, the examiner disagrees with appellant's suggestion that "...it would be well understood by one skilled in the art that what was meant was 'the bottom end.'" While one of ordinary skill in the art might speculate as to what aspect of the claimed invention might constitute "the external bottom end" the claim remains to be vague and indefinite with regard to the actual structure intended to be patented by applicant.

Regarding the insufficient antecedent basis for the limitation of "its top rim" in claim 152, line 3, since the claim includes two previous recitations of "top rim", the examiner can not agree with appellant's suggestion that "...one skilled in the art would recognize that what was meant, was 'said bottom housing top rim'". While one of ordinary skill in the art might speculate as to which one of the two recitations of the "top rim" the term "its" might reference the claim remains to be vague and indefinite with regard to which precise one of the two recitations of the "top rim" are intended to be patented by applicant.

With regard to claim 152, the examiner disagrees with appellant's suggestion that "...that one skilled in the art would clearly understand from Fig. 4 of the appellants drawings what is meant by the top rim facing said vessel top end, especially since both the bottom housing top rim and the vessel top end are clearly defined in the specification and in claim 151." In this regard appellant is reminded that limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550- 551 (CCPA 1969). See also In re Zletz, 893 F.2d

319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.").

Regarding claim 153, the examiner can not agree with appellant's suggestion that "...one skilled in the art would readily recognize that what should be recited is 'a burner fuel intake port'." While one of ordinary skill in the art might speculate as to what aspect of the claimed invention might constitute a "burner fuel intake port" the claim remains to be vague and indefinite with regard to which precise structure intended to be patented by applicant.

Ground 2 - Rejection of claims 151-152 under 35 U.S.C. 102(b) as being anticipated by **US002154305 (Goerl)**.

Regarding the prior art reference of **US002154305 (Goerl)** the examiner can not agree with appellant's suggestion that "...clearly the surfaces 32 and 33 cannot reasonably be considered to reside at a bottom end of the vessel 13." With regard to the vessel bottom end recited in claim 151 the examiner maintains the position that the entirety of the vessel (13) lower surface sections (31, 32, 33) are the structurally and functionally the same as applicant's broadly claimed "a thermally conductive bottom end". That is, the mere recitation of "a thermally conductive bottom end" does not preclude a vessel such as that shown and disclosed in US 2154305 (Goerl), where the end (31, 32, 33) has a non-planar profile. US 2154305 (Goerl) nonetheless meets the limitations of applicant's claims since applicant's claim 151 only further requires the bottom end have "an external bottom side for receiving heat" which, in the examiner's opinion is met by at least the bottom end side, or surface, (32). Furthermore, in the same manner intended by applicant's invention, the contoured bottom non-vertical end surface(s) (31, 32, 33) of US 2154305 (Goerl) are intended to receive heat rising from a burner located there below. That is, because of their inclined (33) and

horizontal (31, 32) orientation with respect to the upward flow of heat from the heat source.

With regard to claim 152 appellant argues that “Even though the diameter of the lower end rim (55) is less than the diameter of the vessel outlet port (35), it does not follow that the bottom housing 17 can be placed in the vessel cavity in an upright position, since the lower wall portion 33 is conically tapered and would not allow the bottom housing 17 to be placed therein in an upright position. For that reason, the bottom housing 17 is placed within the container 13 in an inverted position as will be seen in Fig. 4.” The examiner disagrees. The conical taper of Appellant’s claim US 2154305 (Goerl) will not preclude the bottom housing 17 to be placed therein in an upright position since the round bottom rim of the lower wall portion, being less in diameter than the diameter of the vessel outlet port (35) could rest on the inclined conical wall. That is, as evidenced by the relatively smaller diameter of bottom housing rim (55) the bottom housing (17) it is capable of being placed in, or stored in, the vessel (13) in an inverted orientation from that which is shown in figure 4. When placed within the vessel in such an inverted (relative to figure 4) orientation the bottom rim of the bottom housing would rest on the inclined or sloped portion (33) of the vessel. The bottom housing would therefore nonetheless be stored or positioned within the vessel. It is important to note that appellant’s claim merely requires the bottom housing can be placed in the vessel cavity in an upright position. This limitation does not require the bottom housing to be fully placed and/or confined within the vessel.

Ground 3 - Rejection of claims 106-116 as being unpatentable over US 2154305 (Goerl) in view of GB 882,881 (Horner).

With regard to **GB 882,881 (Horner)** the appellants do not agree that this reference is in the “same portable heater field of endeavor” as the present invention. The examiner disagrees. This reference describes a tea kettle which is portable to the extent that it is moved to and from a stove. Accordingly, the examiner maintains that the tea kettle design of **GB 882,881 (Horner)** is necessarily in the same portable heater field of endeavor as applicants claimed invention.

With regard to **GB 882,881 (Horner)** appellants further argue that “...one skilled in the art of field cooking kits is not likely to refer to the art of tea kettles in order to improve his

product. Further, there is nothing in either of the two references which would suggest the combination of the features with the other reference to obtain the appellant's invention as suggested by the Examiner.” In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is for the purpose of increasing the thermal heat efficiency of the heated vessel, by confining the flow to heat about the vessel bottom, that it would have been obvious to a person having ordinary skill in the art to modify **US002154305** to include a single thermally conductive member along the entire extent of a peripheral edge of the external bottom side in the manner set forth in applicant's claims, in view of the teaching of **GB 882,881 (Horner)**.

With regard to **GB 882,881 (Horner)** appellants further argue that “It should be recognized that the '305 patent has been publicly available since 1939 and that the '881 has been publicly available since 1961. If the combination of the features of these two references were obvious to one skilled in the art, why has no one else (i.e. other than the present inventors), made such a combination in the last 45 years?” In response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

Ground 4 - Rejection of claims 117-149 under 35 U.S.C. 103(a) as being unpatentable over **US 2154305 (Goerl)** in view of **GB 882,881 (Horner)** and **DE 3339848**.

With regard to **DE 3339848** appellant's argue that “The burner is located below the bottom surface of the inner vessel, but is above the lower portion of the wire mesh structure such that that portion of the wire mesh structure which closely surrounds the burner plays no role in conducting the heat from the burner to either of the vessels.” The examiner does not agree with appellants' representation of the teachings of **DE 3339848**. While **DE 3339848** does include a

wire mesh 12, it is noted that the burner is both positioned above the mesh (Figure 1) and necessarily within the confines of the center cavity formed by the heat exchange members 15, located between the mesh and the bottom and side walls of the heated vessel 9.

Ground 5 - Rejection of claims 153-160 under 35 U.S.C. 103(a) as being unpatentable over US 2154305 (Goerl) in view of FR 2446097.

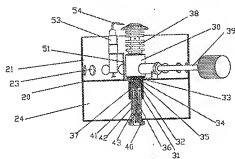
With regard to DE 3339848 appellants' argue that "the burner fuel intake port is not coupled to a fuel source in a position below the bottom housing as recited". In this regard appellants are reminded that DE 3339848 is relied on for that which is positively taught therein. That is, it is for the purpose of providing a suitable alternative burner and fuel source that it would have been obvious to a person having ordinary skill in the art to substitute for the burner of US 2154305 (Goerl) a burner arrangement such as that taught by FR 2 446 097 which includes a burner fuel source and threaded burner fuel port extending from below and into the bottom housing. Further in response to appellants' argument against the prior art reference of FR 2 446 097, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). And, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding claims 153-160 the examiner maintains that it is well known to place igniters above, that is, downstream of fuel exiting burner heads as a recognized optimal location to effect ignition of the fuel (see FR 2 816 395 (of record)). Thus, in view of that which is well known, it would have been obvious to a person having ordinary skill in the art to provide US 2154305 (Goerl) with such an igniter arrangement. Regarding any necessary recess or indentation in the cover for receiving or accommodate the extending igniter portion it is noted that the covers (23,

39, 40, and 41) of **US 2154305 (Goerl)** is formed with such a recess capable of performing this function. In regard to claims **159** and **160**, Official Notice is taken that burner components are known to be secured by slot and dimple attachment means for (see for example **US004374489**). Thus, it would have been obvious to a person having ordinary skill in the art to modify attachment of the upper and lower housings in **US 2154305 (Goerl)** to include such well known securing and fastening arrangement.

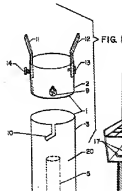
Also, Official Notice is taken that it is well known to place igniters above, that is, downstream of fuel exiting burner heads as a recognized optimal location to effect ignition of the fuel (see **FR 2 816 395** (of record)). Thus, in view of that which is well known, it would have been obvious to a person having ordinary skill in the art to provide **US 2154305 (Goerl)** with such an igniter arrangement. Regarding any necessary recess or indentation in the cover for receiving or accommodate the extending igniter portion it is noted that the covers (23, 39, 40, and 41) of **US 2154305 (Goerl)** is formed with such a recess capable of performing this function. In regard to claims **159** and **160**, Official Notice is taken that burner components are known to be secured by slot and dimple attachment means for (see for example **US004374489**). Thus, it would have been obvious to a person having ordinary skill in the art to modify attachment of the upper and lower housings in **US 2154305 (Goerl)** to include such well known securing and fastening arrangement.

With regard to the examiner's taking of Official Notice with respect to the placement of igniters in portable burner devices see figure 3 of **FR 2 816 395** reproduced here below:



F I G . 3

With regard to the examiner's taking of Official Notice with respect to the components known to be secured by slot and dimple attachment means see figure 1 of US004374489 reproduced below:



For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Carl D. Price/

Primary Examiner, Art Unit 3749

Conferees:

/Steven B. McAllister/

Supervisory Patent Examiner, Art Unit 3749

/Thomas Denion/

SPE, Art Unit 3748